

BLUE STAR, INC.  
ATOMIC WESTERN, INC.  
FREMONT ENERGY CORP.  
IVOR ADAIR

IBLA 79-272

Decided July 11, 1979

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, cancelling Patent Nos. 203103 and 203106. Santa Fe 02585 and 02588.

Appeal dismissed for lack of jurisdiction.

1. Administrative Authority: Generally -- Administrative Procedure:  
Administrative Review -- Appeals -- Assistant Secretaries of the Interior  
-- Delegation of Authority: Generally -- Indian Lands: Fee Lands --  
Indian Lands: Patent in Fee: Jurisdiction -- Office of Hearings and  
Appeals -- Patents of Public Lands: Generally -- Rules of Practice:  
Appeals: Generally -- Secretary of the Interior

A decision by the Bureau of Land Management cancelling fee simple patents issued to Indians and simultaneously issuing new Indian trust patents is not subject to review by the Board of Land Appeals, which has no jurisdiction in the matter, where the decision was made at the direction of the Assistant Secretary for Indian Affairs.

APPEARANCES: William W. Head, Jr., Esq., Gallup, New Mexico, for appellants; Wayne H. Bladh, Esq., Window Rock, Arizona, for the heirs of Esdsa Alts-issigi and Ashi-Ni-Biye.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On June 5, 1911, Patents Nos. 203103 and 203106, were issued to Esdsa Alts-issigi and Ashi-Ni-Biye, respectively, as their Indian

Homesteads, pursuant to the Homestead Act of April 28, 1904 (33 Stat. 566). These patents apparently gave fee title to the lands named therein to these individuals.

On April 26, 1978, Forrest J. Gerard, Assistant Secretary of the Interior for Indian Affairs, issued an order cancelling these patents, in order to return the lands described therein to trust status so that the estates of Esdsa Alts-issigi and Ashi-Ni-Biye could be probated by the Department. The Assistant Secretary also requested the Director, Bureau of Land Management (BLM) to issue trust patents to the heirs of these individuals for the same lands.

On May 31, 1978, the Director, BLM, issued a memorandum to the State Director, New Mexico State Office, BLM, instructing him to issue a decision cancelling these patents and providing for the issuance of new trust patents. On November 9, 1978, during the pendency of the preparation of appropriate action by the State Office, a group of lessees and successors of lessees of various uranium leases on the lands in question contacted the Bureau of Indian Affairs (BIA) to inform it that they held rights in the lands in question and to request that a hearing be held before any action was taken to convert the property from fee to trust status. <sup>1/</sup>

In response to the lessees' inquiry, on December 26, 1978, Kenneth J. Fredericks, Acting Director, Office of Trust Responsibilities, BIA, advised them as follows:

If your clients have a valid lease, which was executed by the owners of the property while it was in a fee status, the lease would not be affected by the Order of the Assistant Secretary-Indian Affairs cancelling the patents; the leasing regulations 25 CFR Part 131 provide that the termination of Federal jurisdiction on Indian trust lands, shall not serve to abrogate any outstanding leases made on such lands; likewise, the cancellation of a fee patent and the issuance of a trust patent in lieu thereof should not serve to abrogate any valid outstanding lease negotiated by the owners of the leased premises during the period the lands were in a non-trust status.

On February 8, 1979, BLM issued decisions cancelling the patents pursuant to the order of the Assistant Secretary of April 26, 1978,

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<sup>1/</sup> It appears from our perusal of the record that BLM's statement in its decision of February 8, 1979, that there is nothing in the record indicating any leasing of the land, is inaccurate.

and simultaneously issuing new trust patents covering the same land. The decisions provided information concerning the right of appeal to this Board. The holders of uranium leases of these lands filed a timely notice of appeal of these decisions to this Board.

[1] Notwithstanding BLM's notice concerning right of appeal of its decision, this Board lacks jurisdiction to consider the merits of the uranium lessees' appeal. Where a decision has been made by an Assistant Secretary of the Interior or at his direction, that decision is not subject to review on appeal to this Board under the procedures prescribed in 43 CFR Part 4, and the Board has no jurisdiction in the matter.

The delegation of authority to the Assistant Secretaries of the Interior is set forth in the Departmental Manual at 210 DM 1.2 which, inter alia, provides that "\* \* \* the Assistant Secretaries severally are authorized to exercise all of the authority of the Secretary." Release No. 1538 (May 2, 1973).

The delegation of authority to the Director, Office of Hearings and Appeals, is set forth at 211 DM 13.1, which provides that "[t]he Director, Office of Hearings and Appeals, is authorized to exercise \* \* all of the supervisory authority of the Secretary over hearings and appeals on all matters within the jurisdiction of the Department." Release No. 1600 (December 14, 1973).

The scope of the authority of the Office of Hearings and Appeals and its several component boards of appeal are described in 43 CFR 4.1, the first sentence of which states:

The Office of Hearings and Appeals, headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings and appeals and other review functions of the Secretary.

From these expressions we find that the authority which has been delegated to the Office of Hearings and Appeals and to its Director, for the purpose of its specific functions, is the equivalent of that delegated to each of the several Assistant Secretaries, i.e., "all of the authority of the Secretary." Accordingly, each has the power to act with finality on matters within his or her own province. It follows that it was not contemplated that one officer who commands all of the authority of the Secretary should employ that authority to invade the province of another such officer who is not under his direct supervision. Thus, where an Assistant Secretary has made a decision or, prior to the filing of an appeal, has approved a decision made by a subordinate, that decision may not be reviewed in the

Office of Hearings and Appeals since the full authority of the Secretary would have been exercised.

BLM's decisions to reject the fee patents issued in 1911 and to issue new trust patents covering the same land were made at the direction of Assistant Secretary Girard. Accordingly, BLM's decisions are not subject to review on appeal to this Board, and we have no jurisdiction in the matter. Accordingly, the appeal is dismissed.

Edward W. Stuebing  
Administrative Judge

I concur:

James L. Burski  
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I would hold that while the Board would have jurisdiction under 43 CFR 4.1, the cancellation order is not appealable to the Board under 43 CFR 4.410.

The fact that the Secretary has retained supervisory authority under 43 CFR 4.5 does not affect the jurisdiction of the Board; that section is, of course, indicative of the intent that Board decisions should be in accordance with written Secretarial policies.

The right of an appellant to seek Board review is limited by 43 CFR 4.410:

§ 4.410 Who may appeal.

Except as otherwise provided in Group 2400 of Chapter II of this title, except to the extent that decisions of Bureau of Land Management officers must first be appealed to an administrative law judge under § 4.470 and Part 4110 of this title, and except where a decision has been approved by the Secretary, any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or of an administrative law judge, shall have a right to appeal to the Board.

There is thus no right of appeal to the Board from a Secretarial decision.

Appellants herein desire to appeal the cancellation of the patent. The BLM decision of February 8, 1979, states that the Order of the Assistant Secretary, Indian Affairs, dated April 26, 1978, "cancels the patent." Such order canceling the patent is a decision approved by the Secretary under section 4.410, and the Board therefore has no jurisdiction.

Joseph W. Goss  
Administrative Judge

